

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

AMENDED IN SENATE APRIL 2, 2003

AMENDED IN SENATE MARCH 18, 2003

**SENATE BILL**

**No. 103**

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**Introduced by Senator Alpert**

January 29, 2003

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An act to amend Section ~~6203~~ 24871 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Alpert. Sales and use taxes.

*The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, the business income is apportioned between this state and other jurisdictions for tax purposes in accordance with a specified formula based on the property, payroll, and sales of the business within and without this state. The existing Corporation Tax Law generally conforms with the federal income tax treatment of regulated investment companies (RIC) that allow a RIC to pass ordinary income on to the shareholders without incurring any tax liability to the RIC.*

*This bill would clarify that dividends received by a California corporate shareholder from a RIC are generally not excludable from the income of that corporate shareholder. This bill would declare that this clarification is operative for taxable years beginning on or after January 1, 2003.*

~~The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this~~

~~state of, tangible personal property. That law imposes the sales tax upon “retailers,” and defines a “retailer engaged in business in this state” to include specified entities. Existing law provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser.~~

~~This bill would clarify that a retailer is engaged in business in this state if a retailer authorizes an employee, representative, or independent contractor operating in this state for the purpose of servicing or repairing tangible personal property.~~

~~This bill would clarify that the processing of orders electronically, by fax, telephone, the Internet, or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is engaged in business in this state.~~

~~This bill would also clarify that a retailer is engaged in business in this state if the retailer is related, as specified, to a retailer maintaining sales locations in this state, provided the retailer sells similar products under a similar name as the California retailer, or facilities or employees of the related California retailer are used to advertise or promote sales by the retailer to California purchasers.~~

~~This bill would state the intent of the Legislature in enacting the bill and would specify that the provisions are intended to prospectively clarify existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 6203 of the Revenue and Taxation Code~~
- 2     ~~SECTION 1. Section 24871 of the Revenue and Taxation Code~~
- 3     ~~is amended to read:~~
- 4     24871. (a) (1) Section 852(b)(1) of the Internal Revenue
- 5     Code, relating to imposition of tax on regulated investment
- 6     companies, ~~shall~~ does not apply.
- 7     (2) Every regulated investment company shall be subject to the
- 8     taxes imposed under Chapter 2 (commencing with Section 23101)
- 9     and Chapter 3 (commencing with Section 23501), except that its

“net income” shall be equal to its “investment company income,” as defined in subdivision (b).

(b) “Investment company income” means investment company taxable income, as defined in Section 852(b)(2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b)(2)(A) of the Internal Revenue Code, relating to an exclusion for net capital gain, ~~shall does~~ not apply.

(2) Section 852(b)(2)(B) of the Internal Revenue Code, relating to net operating losses, is modified to deny the deduction allowed under Sections 24416 and 24416.1, in lieu of denying the deduction allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b)(2)(C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under ~~Section 24402~~ *Sections 24402, 24406, 24410, and 25106*.

(4) The deduction for dividends paid, under Section 852(b)(2)(D) of the Internal Revenue Code, is modified to allow capital gain dividends and exempt interest dividends (to the extent that interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b)(3)(A) of the Internal Revenue Code, relating to capital gains, ~~shall does~~ not apply.

(d) Section 852(b)(5)(B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, ~~shall does~~ not apply.

(e) Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment companies, is modified to refer to ~~Section 24402~~ *Sections 24402, 24406, 24410, and 25106*, in lieu of Section 243 of the Internal Revenue Code.

~~(f) The amendments made to this section by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1993.~~

SEC. 2. (a) The amendments made to Section 24871 of the Revenue and Taxation Code by this act shall be applied to taxable years beginning on or after January 1, 2003.

(b) It is the intent of the Legislature that no inference be drawn in connection with any matter governed by Section 24871 of the Revenue and Taxation Code, from the period to which the

1 amendments made to that section by this act apply, for any taxable  
2 year beginning before January 1, 2003.

3 ~~is amended to read:~~

4 ~~6203. (a) Except as provided by Sections 6292 and 6293,~~  
5 ~~every retailer engaged in business in this state and making sales of~~  
6 ~~tangible personal property for storage, use, or other consumption~~  
7 ~~in this state, not exempted under Chapter 3.5 (commencing with~~  
8 ~~Section 6271) or Chapter 4 (commencing with Section 6351),~~  
9 ~~shall, at the time of making the sales or, if the storage, use, or other~~  
10 ~~consumption of the tangible personal property is not then taxable~~  
11 ~~hereunder, at the time the storage, use, or other consumption~~  
12 ~~becomes taxable, collect the tax from the purchaser and give to the~~  
13 ~~purchaser a receipt therefor in the manner and form prescribed by~~  
14 ~~the board.~~

15 ~~(b) As respects leases constituting sales of tangible personal~~  
16 ~~property, the tax shall be collected from the lessee at the time~~  
17 ~~amounts are paid by the lessee under the lease.~~

18 ~~(c) “Retailer engaged in business in this state” as used in this~~  
19 ~~section and Section 6202 means and includes any of the following:~~

20 ~~(1) Any retailer maintaining, occupying, or using, permanently~~  
21 ~~or temporarily, directly or indirectly, or through a subsidiary, or~~  
22 ~~agent, by whatever name called, an office, place of distribution,~~  
23 ~~sales or sample room or place, warehouse or storage place, or other~~  
24 ~~place of business.~~

25 ~~(2) Any retailer having any representative, agent, salesperson,~~  
26 ~~canvasser, independent contractor, or solicitor operating in this~~  
27 ~~state under the authority of the retailer or its subsidiary for the~~  
28 ~~purpose of selling, delivering, installing, assembling, servicing,~~  
29 ~~repairing, or the taking of orders for any tangible personal~~  
30 ~~property.~~

31 ~~(3) As respects a lease, any retailer deriving rentals from a lease~~  
32 ~~of tangible personal property situated in this state.~~

33 ~~(4) (A) Any retailer soliciting orders for tangible personal~~  
34 ~~property by mail if the solicitations are substantial and recurring~~  
35 ~~and if the retailer benefits from any banking, financing, debt~~  
36 ~~collection, telecommunication, or marketing activities occurring~~  
37 ~~in this state or benefits from the location in this state of authorized~~  
38 ~~installation, servicing, or repair facilities.~~

~~(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.~~

~~(5) Notwithstanding Section 7262, a retailer specified in paragraph (4) above, and not specified in paragraph (1), (2), or (3) above, is a “retailer engaged in business in this state” for the purposes of this part and Part 1.5 (commencing with Section 7200) only.~~

~~(d) (1) For purposes of this section, “engaged in business in this state” does not include the taking of orders from customers in this state through a computer telecommunications network located in this state that is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.~~

~~(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.~~

~~(e) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale~~

1 of tangible personal property made pursuant to an order taken at  
2 or during those convention and trade show activities.

3 (f) Any limitations created by this section upon the definition  
4 of “retailer engaged in business in this state” shall only apply for  
5 purposes of tax liability under this code. Nothing in this section is  
6 intended to affect or limit, in any way, civil liability or jurisdiction  
7 under Section 410.10 of the Code of Civil Procedure.

8 (g) (1) The processing of orders electronically, by fax,  
9 telephone, the Internet, or other electronic ordering process, does  
10 not relieve a retailer of responsibility for collection of the tax from  
11 the purchaser if the retailer is engaged in business in this state  
12 pursuant to this section.

13 (2) For purposes of this section, a retailer is engaged in business  
14 in this state, as defined in paragraphs (1) and (2) of subdivision (c),  
15 if both of the following conditions exist:

16 (A) The retailer holds a substantial ownership interest, directly  
17 or through a subsidiary, in a retailer maintaining sales locations in  
18 California or is owned in whole or in substantial part by that  
19 retailer, or by a parent or subsidiary thereof. For purposes of this  
20 subparagraph, “substantial ownership interest” in an entity means  
21 that degree of ownership of equity interests in an entity that is not  
22 less than that degree of ownership as specified by Section 78p of  
23 Title 15 of the United States Code, or any successor to that statute,  
24 with respect to a person other than a director or officer.

25 (B) The retailer sells the same or substantially similar line of  
26 products as the retailer maintaining sales locations in California  
27 under the same or substantially similar business name, or facilities  
28 or employees of the related retailer located in this state are used to  
29 advertise or promote sales by the retailer to California purchasers.

30 SEC. 2. The Legislature finds and declares all of the  
31 following:

32 (a) The amendment to Section 6203 of the Revenue and  
33 Taxation Code by this act is intended to prospectively clarify  
34 existing law.

35 (b) This amendment is necessary in order to prospectively  
36 clarify that a retailer that is engaged in business in the state cannot  
37 be relieved of the nexus created by its location in the state through  
38 use of an affiliate, subsidiary, or related company, the purpose of  
39 which is to engage in similar transactions through the processing  
40 of orders by electronic means.

1 ~~(c) In amending Section 6203 of the Revenue and Taxation~~  
2 ~~Code in this act, it is not the intent of the Legislature to, in any way,~~  
3 ~~extend or broaden the definition of retailer engaged in business in~~  
4 ~~the state, but solely to prospectively clarify the definition for use~~  
5 ~~by all retailers. Also, it is not the intent of the Legislature in~~  
6 ~~amending Section 6203 of the Revenue and Taxation Code in this~~  
7 ~~act to affect, in any way, any investigation, audit, or other~~  
8 ~~enforcement action by the State Board of Equalization that has~~  
9 ~~been initiated prior to January 1, 2004.~~

10 ~~(d) In defining the term “substantial ownership interest” on the~~  
11 ~~basis of standards set forth in federal law, it is the intent of the~~  
12 ~~Legislature to incorporate those longstanding parameters of~~  
13 ~~federal securities law that identify those principal stockholders of~~  
14 ~~a legal entity that may fairly be equated with persons exerting a~~  
15 ~~substantial influence over that entity.~~

16 ~~(e) Pursuant to Section 3.5 of Article III of the California~~  
17 ~~Constitution, the Legislature hereby directs the State Board of~~  
18 ~~Equalization to fully enforce this act.~~

